IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-124

Filed 18 November 2026

Mecklenburg County, No. 20CVD016090-590

BARBARA SALLEY, Plaintiff,

v.

HERMAN B. JONES, Defendant.

Appeal by Plaintiff from order entered 31 January 2025 by Judge Roy H. Wiggins in Mecklenburg County District Court. Heard in the Court of Appeals 28 October 2026.

Law Office of Yolanda M. Trotman, PLLC, by Yolanda M. Trotman, for Plaintiff-Appellant.

Sodoma Law Lake Norman, by Sarah E. Bennett, for Defendant-Appellee.

COLLINS, Judge.

Plaintiff appeals from the trial court's order denying her motions for a new trial and for relief from judgment following entry of an order denying her claims for alimony and attorney's fees and distributing the parties' marital property. For the reasons stated herein, we affirm.

I. Background

Plaintiff and Defendant were married on 11 December 2001 and separated on 1 August 2019. Plaintiff filed a complaint on 8 December 2020 for absolute divorce, post-separation support, alimony, equitable distribution, and attorney's fees. Defendant answered and asserted a counterclaim for equitable distribution.

The trial court conducted a pretrial conference and heard Plaintiff's claims for post-separation support and attorney's fees on 26 February 2021. The trial court entered an order on 22 April 2021 denying both claims.

Pursuant to the pretrial conference order, the parties were required to file and serve equitable distribution affidavits by 2 April 2021. Defendant timely filed his affidavit on 1 April 2021. A status conference order entered 3 June 2021 provided that, should Plaintiff fail to file her equitable distribution affidavit and produce the required financial documents, her documents would be excluded at trial. Plaintiff did not file her equitable distribution affidavit until 2 September 2022, more than one year after the deadline imposed by the court.

Plaintiff's counsel filed a motion to withdraw on 6 December 2022, which was granted by order entered on 26 January 2023. Plaintiff filed a pro se motion to continue the trial scheduled for 3 April 2023 on the grounds that her attorney had withdrawn and that she was in the process of retaining another attorney. Defendant objected to the motion, asserting that Plaintiff had more than three months' notice of her attorney's withdrawal within which to retain new counsel and that Defendant had "incurred significant undue financial hardship as a result of the delays in this

case." The trial court entered an order on 23 March 2023 denying Plaintiff's motion to continue.

Defendant filed a motion in limine to exclude all evidence offered by Plaintiff in support of her equitable distribution claim. The matter came on for trial on 3 April 2023. The trial court entered a judgment of absolute divorce that same day. Thereafter, on 28 April 2023, the trial court entered an order allowing Defendant's motion to exclude Plaintiff's equitable distribution evidence, denying Plaintiff's claims for alimony and attorney's fees, and distributing the parties' marital property.

Plaintiff filed a motion for a new trial pursuant to Rule 59 and a motion for relief from judgment pursuant to Rule 60 on 15 May 2023. Plaintiff asserted that she did not receive her file from prior counsel until six days before trial and that she was seventy-one years old. Plaintiff moved to set aside the 28 April 2023 order on those same grounds and also asserted that the order contained several errors. Plaintiff filed an amended motion that same day.

Defendant moved to dismiss on 8 September 2023, arguing, in relevant part, that Plaintiff's Rule 59 motion was untimely because it was filed beyond the ten-day deadline . Following a hearing, the trial court entered an order on 31 January 2025 concluding that Plaintiff's Rule 59 motion was untimely because it was filed seventeen days after entry of the 28 April 2023 order; that Plaintiff was not entitled

to a continuance of the 3 April 2023 trial; and that Plaintiff's allegations of factual errors were unsupported by reliable evidence. Plaintiff appealed.[1]

II. Discussion

A. Rule 59 Motion

Plaintiff first argues that the trial court erred by denying her Rule 59 motion.

"A trial court's ruling on a motion for a new trial under Rule 59 is usually subject to an abuse of discretion standard." *Davis v. Davis*, 360 N.C. 518, 523 (2006) (citation omitted). "Abuse of discretion results where the trial court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Davis v. Woods*, 286 N.C. App. 547, 555 (2022) (cleaned up). "However, where the Rule 59 motion involves a question of law or legal inference, our standard of review is de novo." *N.C. All. for Transp. Reform, Inc. v. N.C. Dep't of Transp.*, 183 N.C. App. 466, 469 (2007) (cleaned up). Under de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower court. *TOG Props., LLC v. Pugh*, 276 N.C. App. 422, 425 (2021).

A motion for a new trial under Rule 59 must be served no later than ten days after entry of the judgment. N.C. Gen. Stat. § 1A-1, Rule 59(b) (2025). The "trial court has no authority to alter or amend a judgment under [Rule 59] pursuant to a

[1] Plaintiff's notice of appeal also designated the trial court's 28 April 2023 order. Because Plaintiff did not file her notice of appeal until 28 February 2025, her appeal from that order was untimely. *See* N.C. R. App. P. 3.

motion made more than 10 days after entry of the judgment sought to be altered or amended." *Coats v. Coats*, 79 N.C. App. 481, 482 (1986).

Here, Plaintiff did not file her Rule 59 motion until 15 May 2023, more than ten days after the trial court entered its order on 28 April 2023. As her Rule 59 motion was untimely, the trial court lacked jurisdiction to entertain her motion. *See Fallis v. Watauga Med. Ctr., Inc.*, 132 N.C. App. 43, 55 (1999) (holding that the trial court lacked jurisdiction to entertain plaintiffs' Rule 59 motion where it was filed more than ten days after entry of judgment). Accordingly, the trial court did not err by denying Plaintiff's Rule 59 motion.

B. Rule 60 Motion

Plaintiff argues that the trial court erred by denying her Rule 60 motion. Specifically, Plaintiff argues that the trial court erred by denying her motion to continue the 3 April 2023 trial.

"A motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion." *QUB Studios, LLC v. Marsh*, 262 N.C. App. 251, 256 (2018) (cleaned up). A trial court may be reversed for abuse of discretion only upon a showing that its ruling was "manifestly unsupported by reason" or "so arbitrary that it could not have been the result of a reasoned decision." *HSBC Bank United States v. PRMC, Inc.*, 249 N.C. App. 255, 260 (2016).

Rule 60(b) provides for relief from a judgment or order for reasons including mistake, inadvertence, surprise, or excusable neglect, and "[a]ny other reason justifying relief from the operation of the judgment." N.C. Gen. Stat. § 1A-1, Rule 60(b)(1), (6) (2025).

Here, Plaintiff's counsel filed a motion to withdraw on 6 December 2022, which the trial court allowed by order entered 26 January 2023. Plaintiff filed her pro se motion to continue the 3 April 2023 trial on 17 March 2023. Plaintiff had more than four months following her attorney's motion to withdraw, and more than two months following entry of the order allowing her attorney to withdraw, within which to retain substitute counsel. The parties' divorce proceedings had been pending for over two years, during which time Defendant continued making mortgage payments on the marital residence where Plaintiff resided. Under these circumstances, the trial court's decision to deny Plaintiff's motion to continue and proceed with trial was not an abuse of discretion.

Plaintiff also argues that the denial of her motion to continue deprived her of due process. Plaintiff did not raise this constitutional argument before the trial court and has thus failed to preserve the issue for appellate review. *See Anderson v. Assimos*, 356 N.C. 415, 416 (2002) ("A constitutional issue not raised at trial will generally not be considered for the first time on appeal.").

Because Plaintiff has failed to demonstrate that the trial court abused its discretion by denying her motion to continue, she has likewise failed to show that the trial court abused its discretion by denying Rule 60 relief on this basis.

C. Rule 52

Plaintiff next argues that the trial court's order fails to comply with Rule 52 of the North Carolina Rules of Civil Procedure.

"Findings of fact and conclusions of law are necessary on decisions of any motion or order ex mero motu only when requested by a party." N.C. Gen. Stat. § 1A-1, Rule 52(a)(2) (2025). A trial court may amend its findings or make additional findings and may amend the judgment upon the motion of a party made no later than ten days after entry of the judgment. *Id.* § 1A-1, Rule 52(b) (2025).

Here, the trial court entered an order denying Plaintiff's post-judgment motions following a hearing, and Rule 52(a)(2) thus governs whether findings of fact and conclusions of law were required. Findings of fact and conclusions of law are required by this rule only when requested by a party. *See id.* § 1A-1, Rule 52(a)(2). Plaintiff does not contend that she requested findings of fact and conclusions of law, and the record contains no indication that such a request was made. Because Plaintiff neither requested findings of fact nor demonstrated that the trial court was otherwise required to make them, the trial court was not required to make findings of fact or conclusions of law in its order denying Plaintiff's post-judgment motions. To the extent Plaintiff argues that the order contains factual inaccuracies, she has

failed to identify anything beyond alleged clerical or immaterial errors.

Accordingly, Plaintiff has failed to establish that the trial court's order does not comply with Rule 52 of the North Carolina Rules of Civil Procedure.

D. Entry of Order

Plaintiff argues that the "delay of the entry of the trial court's order prejudiced [her] and should be vacated." (capitalization altered).

A judgment is considered entered "when it is reduced to writing, signed by the judge, and filed with the clerk of court pursuant to Rule 5." *Id.* § 1A-1, Rule 58 (2025). Subject to limited exceptions, consent for the signing and entry of a judgment out of term, session, county, and district "shall be deemed to have been given unless an express objection to such action was made on the record prior to the end of the term or session at which the matter was heard." *Id.*

Here, Plaintiff does not argue that she objected to the entry of the order out of session. Instead, Plaintiff appears to argue that she was prejudiced because the order from the 14 November 2024 hearing was not entered until 31 January 2025. Plaintiff has cited no authority establishing a right to review and approve a trial court's order before its entry and has failed to identify any prejudice resulting from the delay between the hearing and the entry of the order. Because Plaintiff has failed to demonstrate either a violation of Rule 58 or prejudice resulting from the timing of the order's entry, her argument is without merit.

III. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Judges GORE and GRIFFIN concur.